LRB-1681

2003 DRAFTING REQUEST

Bill

Received: **01/22/2003**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **Tom Powell**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - cust./plac./vis.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Creating a rebuttable presumption against awarding custody for interspousal battery

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Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	pkahler 02/17/2003	csicilia 02/18/2003		_____ _____			
/P1			jfrantze 02/19/2003	_____ _____	amentkow 02/19/2003		
/1	pkahler	csicilia	jfrantze	_____	sbasford		

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	03/17/2003	03/18/2003	03/18/2003	_____	03/18/2003		
/2	pkahler	csicilia	rschluet	_____	sbasford	sbasford	
	03/27/2003	03/28/2003	03/28/2003	_____	03/28/2003	03/31/2003	
	pkahler		rschluet	_____		sbasford	
	03/28/2003		03/28/2003	_____		03/31/2003	

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3-25-3

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/P1			jfrantze 02/19/2003		amentkow 02/19/2003		

1/1 cjs 3/18/03 3/18 3/18

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/?	pkahler	/pl js 2/18 61	2/21/19	2/19			

FE Sent For:

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1-21

Tom Powell from Rep. Bercean's Office

redraft 2001 AB 651 w/ a1198/2

(AA1 to AB651)

include changes attached

Child Custody Proposal

767.045 Guardians Ad Litem for Minor Children

757.48(1)(a)

767.045(3) **QUALIFICATIONS**
QUESTION FOR DRAFTER: Can a statement be added requiring that GALs receive training on the dynamics of domestic violence and the impact of domestic violence on children?

767.045**(4) RESPONSIBILITIES.** The guardian ad litem shall be an advocate for the best interests of a minor child as to paternity, legal custody, physical placement and support. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child. The guardian ad litem shall consider the factors under s. 767.24 (5) and custody studies under s. 767.11 (14). The guardian ad litem shall investigate whether either party has engaged in interspousal battery as described under s. 940.19 or 940.20, or in domestic abuse as defined in s. 813.12 (1) (am) 1-6. The guardian ad litem shall report to the court the results of the investigation, and if there is evidence of domestic abuse, shall make recommendations to address the safety and well-being of the child and the victim of the domestic abuse. The guardian ad litem shall review and comment to the court on any mediation agreement and stipulation made under s. 767.11 (12). The guardian ad litem shall review and comment to the court on any agreed upon parenting plan made under s. 767.24 (1m). Unless the child otherwise requests, the guardian ad litem shall communicate to the court the wishes of the child as to the child's legal custody or physical placement under s. 767.24 (5) (b). The guardian ad litem has none of the rights or duties of a general guardian.

but not in battery ?

D. note

767.11 FAMILY COURT COUNSELING SERVICES

767.11 (4) MEDIATOR QUALIFICATIONS. Every mediator assigned under sub. (6) shall have not less than 25 hours of mediation training or not less than 3 years of professional experience in dispute resolution.
QUESTION FOR DRAFTER: Can we add a training requirement that they receive training on the dynamics of domestic abuse and the effects of domestic violnece on children?

D note

767.11(8)(c) The initial session under par. (a) shall be a screening and evaluation mediation session to determine whether mediation is appropriate and whether both parties wish to continue in mediation. As part of the screening and evaulation, the mediator shall, for the purposes of deciding whether mediation should be terminated under sub. (10) (e) 1., 2., or 4., inquire of the parties about whether either party has engaged in interspousal battery, as described under s. 940.10 or 940.20, or in domestic abuse, as defined in s. 813.12 (1) (am) 1-6, and shall take the responses to its inquiry into account in deciding whether or not to approve or reject the agreement. Mediation shall only occur if the victim of the interspousal battery or domestic abuse voluntarily consents to participation in mediation.

(1)
(2) D-note
(3) D-note

(12) MEDIATION AGREEMENT. (a) Any agreement which resolves issues of legal custody or periods of physical placement between the parties reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney, if any, for each party and by any appointed guardian ad litem, and submitted to the court to be included in the court order as a stipulation. Any reviewing attorney or guardian ad litem shall certify on the mediation agreement

that he or she reviewed it and the guardian ad litem, if any, shall comment on the agreement based on the best interest of the child. The mediator shall certify that the written mediation agreement is in the best interest of the child based on the information presented to the mediator and accurately reflects the agreement made between the parties. The court may approve or reject the agreement, based on the best interest of the child. Before approving or rejecting the agreement, the court shall inquire of the mediator whether there is evidence that either party has engaged in interspousal battery, as described under s. 940.10 or 940.20, or in domestic abuse, as defined in s. 813.12 (1) (am) 1-6. If there is evidence of domestic abuse, the court shall inquire as to the ways in which the agreement addresses the safety and well-being of the child and of the victim of domestic abuse. The court shall state in writing its reasons for rejecting an agreement.

(14) LEGAL CUSTODY AND PHYSICAL PLACEMENT STUDY. (a) A county or 2 or more contiguous counties shall provide legal custody and physical placement study services. The county or counties may elect to provide these services by any of the means set forth in sub. (3) with respect to mediation. Regardless of whether a county so elects, whenever legal custody or physical placement of a minor child is contested and mediation under this section is not used or does not result in agreement between the parties, or at any other time the court considers it appropriate, the court may order a person or entity designated by the county to investigate the following matters relating to the parties:

1. The conditions of the child's home.
2. Each party's performance of parental duties and responsibilities relating to the child.
3. Whether either party has engaged in interspousal battery, as described under s. 940.10 or 940.20, or in domestic abuse, as defined in s. 813.12 (1) (am) 1-6.
4. Any other matter relevant to the best interest of the child.

(b) The person or entity investigating the parties under par. (a)shall complete the investigation and submit the results to the court. Any custody evaluator who does not have professional background or training in the dynamics of domestic abuse as defined in s. 813.12 (1) (am) 1-6., shall seek consultation from a professional with domestic violence expertise on all custody evaluations that involve allegations of domestic abuse*. The court shall make the results available to both parties. The report shall be a part of the record in the action unless the court orders otherwise.

(c) No person who provided mediation to the parties under this section may investigate the parties under this subsection unless each party personally so consents by written stipulation after mediation has ended and after receiving notice from the person who provided mediation that consent waives the inadmissibility of communications in mediation under s. 904.085.

767.115 Educational programs and classes in actions affecting the family. (1) (a) At any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or circuit court commissioner determines that it is appropriate and in the best interest of the child, the court or circuit court commissioner, on its own motion, may order the parties to attend a program specified by the court or circuit court commissioner concerning the effects on a child of a dissolution of the marriage. If a court or circuit court commissioner requires the parties to attend a program under sub (1)(a) in an action where there is evidence that a party has engaged in interspousal battery, as described under s. 940.10 or 940.20, or in domestic abuse, as defined in s. 813.12 (1) (am) 1-6, the court or circuit court commissioner may not order the parties to attend the program together or at the same time.

767.24 Custody and physical placement. (1) GENERAL PROVISIONS. In rendering a judgment of annulment, divorce, legal separation or paternity, or in rendering a judgment in an

* We will have to define what "domestic violence expertise" is?

TEXT OF AB 651 WITH THE ASSEMBLY AMENDMENT STARTS HERE!

A suggested amendment to AB 651 (pg 6):

767.24 **(6)** (g) If the court found, under sub. (2) (d), that a party had engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (a), and the court awarded periods of physical placement to both parties, the court shall provide for the safety and well–being of the child and for the safety of the party who was the victim of the battery or abuse. For that purpose, the court shall consider all, and shall impose at least one, of the following with consideration of availability of certain services or programs and of the party's ability to pay for those services: …

Other Changes Not Appearing in AB 651 or the Amendment to AB 651:

767.24 (4) ALLOCATION OF PHYSICAL PLACEMENT. (a) 1. Except as provided under par. (b), if the court orders sole or joint legal custody under sub. (2), the court shall allocate periods of physical placement between the parties in accordance with this subsection.
2. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5). Unless the court has found there is evidence that either party engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households. If evidence of domestic abuse exists, the court shall consider evidence of domestic abuse as being contrary to the best interests of the child. The court shall consider the safety and well-being of the child and of the victim of the domestic abuse to be of primary importance.

767.24 (5) FACTORS IN CUSTODY AND PHYSICAL PLACEMENT DETERMINATIONS. In determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. The court shall consider the following factors in making its determination:
(a) The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial.
(b) The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.
(c) The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest.
(cm) The amount and quality of time that each parent has spent with the child in the past, ~~any necessary changes to the parents' custodial roles,~~
(cn) Any reasonable life–style changes that a parent proposes to make to be able to spend increased time with the child ~~in the future~~.
(co) Whether a parent has sought out parenting classes, counseling, or other professional services in order to improve and enhance his or her relationship with the child.
(d) Whether the child consistently exhibits emotional disturbances and/or disruptive behavior after interaction with a parent.
(e) The child's adjustment to the home, school, religion and community.

action under s. 767.02 (1) (e) or 767.62 (3), the court shall make such provisions as it deems just and reasonable concerning the legal custody and physical placement of any minor child of the parties, as provided in this section.

(1m) PARENTING PLAN. In an action for annulment, divorce or legal separation, an action to determine paternity or an action under s. 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court before any pretrial conference. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. A parenting plan shall provide information about the following questions:

(a) What legal custody or physical placement the parent is seeking.

(b) Where the parent lives currently and where the parent intends to live during the next 2 years. If there is evidence that the other parent engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she currently lives and intends to live during the next 2 years.

(c) Where the parent works and the hours of employment. If there is evidence that the other parent engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she works.

(d) Who will provide any necessary child care when the parent cannot and who will pay for the child care.

(e) Where the child will go to school.

(f) What doctor or health care facility will provide medical care for the child.

(g) How the child's medical expenses will be paid.

(h) What the child's religious commitment will be, if any.

(i) Who will make decisions about the child's education, medical care, choice of child care providers and extracurricular activities.

(j) How the holidays will be divided.

(k) What the child's summer schedule will be.

(L) Whether and how the child will be able to contact the other parent when the child has physical placement with the parent providing the parenting plan.

(m) How the parent proposes to resolve disagreements related to matters over which the court orders joint decision making.

(n) What child support, family support, maintenance or other income transfer there will be.

(o) If there is evidence that either party engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the other party, how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.

(2) CUSTODY TO PARTY; JOINT OR SOLE. (a) Subject to pars.(am), (b) and (c), based on the best interest of the child and after considering the factors under sub. (5), the court may give joint legal custody or sole legal custody of a minor child.

(am) The court shall presume that joint legal custody is in the best interest of the child unless there is evidence that either party engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am). The court shall consider evidence of domestic abuse as being contrary to the best interests of the child. The court shall consider the safety and well-being of the child and of the victim of the domestic abuse to be of primary importance.

(em) The age of the child and the child's developmental and educational needs at different ages and whether a parent engages the child in age and developmentally appropriate activities, and satisfactorily supervises the child.
(f) ~~The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household.~~ Whether a party or other person living in a proposed custodial household suffers from mental or physical impairment that negatively impacts upn the child's intellectual, physical or emotional well-being.
(fm) The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.
(g) The availability of public or private child care services.
(gm) The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.
(h) Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.
(i) Whether there is evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02(2).
(j) Whether there is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).
(k) Whether either party has or had a significant problem with alcohol or drug abuse.
(km) The reports of appropriate professionals if admitted into evidence.
(l) Such other factors as the court may in each individual case determine to be relevant.

State of Wisconsin
2001 – 2002 LEGISLATURE

1681/P1
LRB-~~3064/4~~
PJK:~~kmk:rs~~
CJS

2003

~~2001 ASSEMBLY~~ BILL ~~651~~

SA-1d ✓ SA new ✓ x-refs new CRS ✓

Wanted by Thurs, if possible (2-20)

LPS: PWF all section containing amended text.

November 27, 2001 – Introduced by Representatives BERCEAU, LIPPERT, STARZYK, POCAN, RYBA, MCCORMICK, WASSERMAN, J. LEHMAN, MEYERHOFER, LASSA, KREIBICH, SUDER, KRAWCZYK, BIES, COGGS, WIECKERT, LADWIG, SERATTI, SHILLING, SHERMAN, ALBERS and WALKER, cosponsored by Senators BURKE, ERPENBACH, HUELSMAN, ROSENZWEIG, HANSEN, WIRCH, ROBSON, RISSER, ROESSLER, MOORE and COWLES. Referred to Committee on Family Law.

regenerate

AN ACT ***to amend*** 767.23 (1n) and 767.24 (2) (a); and ***to create*** 767.23 (1n) (b) 2., 767.24 (2) (d), 767.24 (6) (f) and 767.24 (6) (g) of the statutes; **relating to:** creating a rebuttable presumption against awarding a parent joint or sole legal custody if the court finds that the parent has engaged in a pattern or serious incident of abuse. Insert RC

Analysis by the Legislative Reference Bureau

Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a child based on the best interest of the child. Although the court may grant sole legal custody to one parent or joint legal custody to both parents, the court must presume that joint legal custody is in the child's best interest. The court may grant sole legal custody only if both parents agree to sole legal custody with the same parent or if at least one parent requests sole legal custody and the court finds that: 1) one parent is not capable of performing parental duties or does not wish to have an active role in raising the child; 2) one or more conditions exist that would substantially interfere with the exercise of joint legal custody; or 3) the parties will not be able to cooperate in future decision making. Evidence of child or spousal abuse creates a rebuttable presumption that the parties will not be able to cooperate in future decision making. Current law requires the court to allocate periods of physical placement between the parties if the court orders sole or joint legal custody. The court may deny periods of physical placement with a parent only if the court finds that the physical placement would

endanger the child's physical, mental, or emotional health. The statutes list a number of factors that the court must consider in awarding both legal custody and periods of physical placement. Among those factors is whether there is evidence of child or spousal abuse.

This bill provides that, if a court finds by a preponderance of the evidence that a parent has engaged in a pattern or serious incident of spousal abuse, there is a rebuttable presumption that it is detrimental to the child and not in the child's best interest for that parent to have either sole or joint legal custody of the child. This presumption takes precedence over the other rules regarding the determination of legal custody, such as the presumption that joint legal custody is in the child's best interest, and may be rebutted only by ~~clear and convincing~~ evidence that: 1) the abusive party has completed a certified treatment program ~~for batterers~~ and is not abusing alcohol or any other drug, and 2) it is in the best interest of the child that the abusive party be given joint or sole legal custody because of the absence, mental illness, or substance abuse of the party who was abused, or because of such other circumstances that affect the best interest of the child, but only if the absence, mental illness, substance abuse, or other circumstances are not a result of the abuse. If the court finds that a party has engaged in a pattern or serious incident of spousal abuse, the court must state in writing in the custody order whether the presumption against awarding custody to the abusive party was rebutted and, if so, what evidence rebutted the presumption, and why its findings related to legal custody and physical placement are in the best interest of the child.

The bill provides that, if the court finds that both parties have engaged in a pattern or serious incident of spousal abuse, for purposes of the presumption the court must attempt to determine which party was the primary physical aggressor. In order to do that, the court must consider a number of specified factors, such as all prior acts of domestic violence between the parties, the relative severity of injuries, if any, whether one of the parties acted in self–defense, and whether there has been pattern of coercive and abusive behavior.

The bill also provides that, if the court grants periods of physical placement to a parent who the court finds has engaged in a pattern or serious incident of spousal abuse, the court must provide for the safety and well–being of the child and for the safety of the other party. The bill specifies a number of actions that the court must consider, and at least one of which the court must impose, for accomplishing this, such as requiring supervised periods of physical placement for the abusive parent, requiring the exchange of the child in a protected setting or in the presence of an appropriate third party who agrees to assume that responsibility, requiring the abusive parent to attend and complete ~~a certified~~ treatment ~~program~~ for batterers as a condition of exercising his or her physical placement, and requiring the abusive parent to abstain from consuming alcohol during and for at least 8 hours before his or her periods of physical placement.

based on the statutory factors that the court must consider in awarding custody and physical placement

a preponderance of

or by a certified treatment provider

treatment for batterers provided through

SIDET: leave as typed

eight

Insert A

~~The requirements in the bill apply to both temporary and permanent orders in all actions affecting the family.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 767.23 (1n) of the statutes is amended to read:

767.23 **(1n)** (a) Before making any temporary order under sub. (1), the court or ~~family~~ circuit court commissioner shall consider those factors that the court is required by this chapter to consider before entering a final judgment on the same subject matter. In making a determination under sub. (1) (a) or (am), the court or ~~family~~ circuit court commissioner shall consider the factors under s. 767.24 (5).

(b) 1. If the court or ~~family~~ circuit court commissioner makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard established by the department under s. 49.22 (9), the court or ~~family~~ circuit court commissioner shall comply with the requirements of s. 767.25 (1n).

(c) A temporary order under sub. (1) may be based upon the written stipulation of the parties, subject to the approval of the court or the ~~family~~ circuit court commissioner. Temporary orders made by ~~the family~~ a circuit court commissioner may be reviewed by the court ~~as provided in s. 767.13 (6)~~.

SECTION 2. 767.23 (1n) (b) 2. of the statutes is created to read:

767.23 **(1n)** (b) 2. If the court or ~~family~~ circuit court commissioner finds by a preponderance of the evidence that a party has engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) ~~(a)~~ am, and makes a temporary order awarding joint or sole legal custody or periods of physical placement to the party, the

court or ~~family~~ circuit court commissioner shall comply with the requirements of s. 767.24 (6) (f) and, if appropriate, (g).

SECTION 3. 767.24 (2) (a) of the statutes is amended to read:

767.24 **(2)** (a) Subject to pars. (am), (b) ~~and~~, (c), and (d), based on the best interest of the child and after considering the factors under sub. (5), the court may give joint legal custody or sole legal custody of a minor child.

SECTION 4. 767.24 (2) (d) of the statutes is created to read:

767.24 **(2)** (d) 1. Notwithstanding pars. (am), (b), and (c), and subject to subd. 2., if the court finds by a preponderance of the evidence that a party has engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), there is a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to award joint or sole legal custody to that party. The presumption may be rebutted only by ~~clear and convincing~~ a preponderance of evidence of all of the following:

a. The party who committed the battery or abuse has successfully completed ~~a certified treatment program for batterers~~ pursuant 4-16 and is not abusing alcohol or any other drug.

b. It is in the best interest of the child for the party who committed the battery or abuse to be awarded joint or sole legal custody because of the absence, mental illness, or substance abuse of the party who was the victim of the battery or abuse, or such other circumstances that affect the best interest of the child, but only if the absence, mental illness, or substance abuse of the party who was the victim of the battery or abuse, or such other circumstances that affect the best interest of the child, are not a result of the battery or abuse.

based on a consideration of the factors under sub. (5)

2. If the court finds under subd. 1. that both parties engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the party who engaged in the battery or abuse for purposes of the presumption under subd. 1. is the party that the court determines was the primary physical aggressor. In determining which party was the primary physical aggressor, the court shall consider all of the following:

a. All prior acts of domestic violence between the parties.

b. The relative severity of the injuries, if any, inflicted upon a party by the other party in any of the prior acts of domestic violence under subd. 2. a.

c. The likelihood of future injury to either of the parties resulting from acts of domestic violence between the parties.

d. Whether either of the parties acted in self–defense in any of the prior acts of domestic violence under subd. 2. a.

e. Whether there is or has been a pattern of coercive and abusive behavior between the parties.

f. Any other factor that the court considers relevant to the determination under this subdivision.

SECTION 5. 767.24 (6) (f) of the statutes is created to read:

767.24 **(6)** (f) If the court found, under sub. (2) (d), that a party had engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the court shall state in writing whether the presumption against joint or sole legal custody was rebutted and, if so, what evidence rebutted the presumption, and why its findings relating to legal custody and physical placement are in the best interest of the child.

SECTION 6. 767.24 (6) (g) of the statutes is created to read:

767.24 **(6)** (g) If the court found, under sub. (2) (d), that a party had engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and the court awarded periods of physical placement to both parties, the court shall provide for the safety and well–being of the child and for the safety of the party who was the victim of the battery or abuse. For that purpose, the court shall ~~consider all, and shall~~ impose at least one of the following:

1. Requiring the exchange of the child to occur in a protected setting or in the presence of an appropriate 3rd party who agrees by affidavit or other supporting evidence to assume the responsibility assigned by the court and to be accountable to the court for his or her actions with respect to the responsibility.

2. Requiring the child's periods of physical placement with the party who committed the battery or abuse to be supervised by an appropriate 3rd party who agrees by affidavit or other supporting evidence to assume the responsibility assigned by the court and to be accountable to the court for his or her actions with respect to the responsibility.

3. Requiring the party who committed the battery or abuse to pay the costs of supervised physical placement.

4. Requiring the party who committed the battery or abuse to attend and complete, to the satisfaction of the court, ~~a certified treatment program for batterers~~ as a condition of exercising his or her periods of physical placement.

5. Requiring the party who committed the battery or abuse to abstain from possessing or consuming alcohol or any controlled substance during, and for at least 8 hours preceding, his or her periods of physical placement.

6. Prohibiting the party who committed the battery or abuse from having overnight physical placement with the child.

7. Requiring the party who committed the battery or abuse to post a bond for the return and safety of the child.

8. Notwithstanding s. 767.045 (5), requiring the continued appointment of a guardian ad litem for the child, or requiring an investigation by an attorney or guardian ad litem for the child.

9. Imposing any other condition that the court determines is necessary for the safety and well–being of the child or the safety of the party who was the victim of the battery or abuse.

SECTION 7. Initial applicability.

(1) This act first applies to actions or proceedings that are commenced on the effective date of this subsection, including actions or proceedings to modify a judgment or order granted before the effective date of this subsection.

(END)

INSERT RC

, requiring a guardian ad litem and a mediator to have training related to domestic violence, and requiring a guardian ad litem to investigate and a mediator to inquire whether a party in an action affecting the family engaged in domestic violence

(END OF INSERT RC)

INSERT A

Under current law, a guardian ad litem (GAL) in an action affecting the family must be an attorney and must have completed three hours of approved continuing legal education relating to a GAL's functions. The bill requires the continuing legal education to include training on the dynamics of domestic violence and its effects on children. The bill requires a GAL in an action affecting the family to investigate whether there is evidence of interspousal battery or domestic abuse, to report to the court on the results of the investigation, and, if there is such evidence, to recommend to the court ways in which the safety and well–being of the child and the victim of the battery or abuse may be addressed.

Under current law, at least one session of mediation is required in an action affecting the family if legal custody or physical placement is contested. The bill requires every mediator to have training on the dynamics of domestic violence and its effects on children. Under current law, a mediator may terminate mediation if there is evidence that a party has engaged in interspousal battery or domestic violence. The bill requires a mediator, at the initial session, to inquire of the parties whether either of them has engaged in interspousal battery or domestic violence. Before deciding whether to approve or reject any agreement that comes out of mediation, the court is required to ascertain from the mediator whether there is evidence of interspousal battery or domestic violence and, if so, the ways in which the agreement addresses the safety and well–being of the child and the victim of the battery or abuse.

Finally, the bill adds to the factors under current law that a court must consider when awarding legal custody and physical placement: whether the child consistently exhibits emotional disturbance or disruptive behavior after spending time with a parent; whether a parent has attended parenting classes or sought professional services to improve his or her relationship with the child; whether a parent engages the child in activites that appropriate for the child's age and stage of development; and whether a parent or other person living in a proposed custodial

Ins A cont'd

household has a mental or physical impairment that negatively affects the child's intellectual, physical, or emotional well–being.

(END OF INSERT A)

INSERT 3–1

184

SECTION 1. 757.48 (1) (a) of the statutes is amended to read:

757.48 **(1)** (a) Except as provided in s. 879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state. In order to be appointed as a guardian ad litem under s. 767.045, an attorney shall have completed 3 hours of approved continuing legal education ~~relating~~ that relates to the functions and duties of a guardian ad litem under ch. 767 and that includes training on the dynamics of domestic violence and the effects of domestic violence on children.

History: Sup. Ct. Order, 50 Wis. 2d vii (1971) 1971 c. 211; 1977 c. 187 s. 96; 1977 c. 299, 447; Stats. 1977 s. 757.48; 1987 a. 355; 1993 a. 16; 1995 a. 27.

SECTION 2. 767.045 (4) of the statutes is amended to read:

767.045 **(4)** RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of a minor child as to paternity, legal custody, physical placement, and support. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child. The guardian ad litem shall consider the factors under s. 767.24 (5) and custody studies under s. 767.11 (14). The guardian ad litem shall investigate whether there is evidence that either parent has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and shall report to the court on the results of the investigation. If the guardian ad litem finds evidence of interspousal battery or domestic abuse, the guardian ad litem shall make recommendations to the court addressing the safety

lns 3-1 contd 2084

and well-being of the child and the victim of the interspousal battery or domestic abuse. The guardian ad litem shall review and comment to the court on any mediation agreement and stipulation made under s. 767.11 (12) and on any parenting plan filed under s. 767.24 (1m). Unless the child otherwise requests, the guardian ad litem shall communicate to the court the wishes of the child as to the child's legal custody or physical placement under s. 767.24 (5) (b). The guardian ad litem has none of the rights or duties of a general guardian.

History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1977 c. 105, 299; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.045; 1987 a. 355; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1993 a. 16, 481; 1995 a. 27, 201, 289, 404; 1997 a. 105, 191; 1999 a. 9; 2001 a. 61.

proposed language

****NOTE: The instructions specified that the GAL must review and comment on an agreed upon parenting plan. Under the statutes, however, any party that seeks sole or joint legal custody or physical placement is supposed to file a parenting plan. There is no provision for filing a joint parenting plan or for agreeing to the other party's parenting plan.

SECTION 3. 767.11 (4) of the statutes is amended to read:

767.11 **(4)** MEDIATOR QUALIFICATIONS. Every mediator assigned under sub. (6) shall have not less than 25 hours of mediation training or not less than 3 years of professional experience in dispute resolution. Every mediator assigned under sub. (6) shall have training on the dynamics of domestic violence and the effects of domestic violence on children.

History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93-03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109.

SECTION 4. 767.11 (8) (c) of the statutes is amended to read:

767.11 **(8)** (c) The initial session under par. (a) shall be a screening and evaluation mediation session to determine whether mediation is appropriate and whether both parties wish to continue in mediation. At the initial session, for purposes of determining whether mediation should be terminated under sub. (10) (e) 1., 2., or 4., the mediator shall inquire whether either of the parties has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93-03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109.

Ins 3-1 cont'd 3 of 4

****NOTE: I did not include proposed language about the mediator taking into account evidence of abuse in deciding whether to approve or reject an agreement because the statutes do not provide for the mediator to approve or reject the agreements.

SECTION 5. 767.11 (12) (a) of the statutes is amended to read:

767.11 **(12)** (a) Any agreement ~~which~~ that resolves issues of legal custody or periods of physical placement between the parties reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney, if any, for each party and by any appointed guardian ad litem, and submitted to the court to be included in the court order as a stipulation. Any reviewing attorney or guardian ad litem shall certify on the mediation agreement that he or she reviewed it and the guardian ad litem, if any, shall comment on the agreement based on the best interest of the child. The mediator shall certify that the written mediation agreement is in the best interest of the child based on the information presented to the mediator and accurately reflects the agreement made between the parties. The court may approve or reject the agreement, based on the best interest of the child. Before approving or rejecting the agreement, the court shall ascertain from the mediator whether there is evidence that either party has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and, if so, the ways in which the agreement addresses the safety and well–being of the child and the victim of the interspousal battery or domestic abuse. The court shall state in writing its reasons for rejecting an agreement.

History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93–03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109.

SECTION 6. 767.11 (14) (a) 2m. of the statutes is created to read:

767.11 **(14)** (a) 2m. Whether either party has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

SECTION 7. 767.11 (14) (d) of the statutes is created to read:

Ins 3-1 cont'd 4074

767.11 **(14)** (d) If the person or entity investigating the parties under par. (a) does not have professional experience or training related to the dynamics of domestic violence, the person or entity shall consult with a professional with expertise on domestic violence in every investigation under par. (a) in which there is evidence that a party engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

more

****NOTE: In answer to your question, you don't have to define or further elaborate on "expertise on domestic violence" unless you want to have control over who is consulted.

SECTION 8. 767.115 (1) (a) of the statutes is amended to read:

767.115 **(1)** (a) At any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or circuit court commissioner determines that it is appropriate and in the best interest of the child, the court or circuit court commissioner, on its own motion, may order the parties to attend a program specified by the court or circuit court commissioner concerning the effects on a child of a dissolution of the marriage. If the court or circuit court commissioner orders the parties to attend a program under this paragraph and there is evidence that one or both of the parties have engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the court or circuit court commissioner may not require the parties to attend the program together or at the same time.

History: 1993 a. 225; 1997 a. 45; 1999 a. 9; 2001 a. 61.

(END OF INSERT 3–1)

INSERT 5–17

SECTION 9. 767.24 (5) (cd) of the statutes is created to read:

767.24 **(5)** (cd) Whether the child consistently exhibits emotional disturbance or disruptive behavior after spending time with a parent.

ins 5-17 cont'd

SECTION 10. 767.24 (5) (cm) of the statutes is amended to read:

767.24 **(5)** (cm) The amount and quality of time that each parent has spent with the child in the past~~, any necessary changes to the parents' custodial roles and any~~.

(cp) Any reasonable ~~life–style~~ changes that a parent proposes to make to be able to spend more time with the child in the future than the parent has spent with the child in the past.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109.

SECTION 11. 767.24 (5) (ct) of the statutes is created to read:

767.24 **(5)** (ct) Whether a parent has attended parenting classes or sought counseling or other professional services to improve and enhance his or her relationship with the child.

SECTION 12. 767.24 (5) (dm) of the statutes is amended to read:

767.24 **(5)** (dm) The age of the child and the child's developmental and educational needs at different ages and whether each parent engages the child in activities that are appropriate for the child's age and stage of development and satisfactorily supervises the child.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109.

SECTION 13. 767.24 (5) (e) of the statutes is repealed and recreated to read:

767.24 **(5)** (e) Whether a party or other person living in a proposed custodial household has a mental or physical impairment that negatively affects the child's intellectual, physical, or emotional well–being.

(END OF INSERT 5–17)

INSERT 6–6

ins 6-6

, giving consideration to the availability of services or programs and to the party's ability to pay for those services or programs,

(END OF INSERT 6–6)

State of Wisconsin
2001 – 2002 LEGISLATURE

LRBa1198/2
PJK:hmh:kjf

ASSEMBLY AMENDMENT 1,

TO 2001 ASSEMBLY BILL 651

February 4, 2002 – Offered by Representatives BERCEAU and LIPPERT.

At the locations indicated, amend the bill as follows:

1. Page 4, line 14: delete "clear and convincing" and substitute "a preponderance of".

2. Page 4, line 16: delete "a certified treatment program for batterers" and substitute "treatment for batterers provided through a certified treatment program or by a certified treatment provider".

3. Page 4, line 18: delete lines 18 to 24 and substitute:

"b. It is in the best interest of the child for the party who committed the battery or abuse to be awarded joint or sole legal custody based on a consideration of the factors under sub. (5).".

4. Page 6, line 20: delete "a certified treatment program for batterers" and substitute "treatment for batterers provided through a certified treatment program or by a certified treatment provider".

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1681/1dn P1
PJK:.....
cjs

I did not include in this version of the draft everything that was proposed in the instructions. For some of the omissions, I included embedded NOTES in the draft after the sections that do not include proposed language. What follows are other comments I have about language I omitted:

1. I did not include in s. 767.11 (8) (c) that mediation will occur only "if the victim of the interspousal battery or domestic abuse voluntarily consents to participation in mediation." The mediator is not in a position to adjudicate whether allegations of abuse are true. Therefore, the most that this proposal could do is to require mediation only if a party who *alleges* abuse consents to participate. That would, however, allow any party who does not want to mediate simply to allege abuse and refuse to consent to mediation. Is that what you want? Section 767.11 (8) (b) already allows the court to hold a trial or hearing without requiring mediation for reasons related to evidence of abuse, and s. 767.11 (10) (e) already allows the mediator to terminate mediation for reasons related to evidence of abuse.

2. I did not include the language proposed for either s. 767.24 (2) (am) or (4) (a) 1. The "unless there is evidence that either party engaged in ...." language in s. 767.24 (2) (am) is unnecessary because, in the draft, proposed s. 767.24 (2) (d) begins with "Notwithstanding par. (am)." In other words, proposed s. 767.24 (2) (d) already addresses the presumption in par. (am).

The proposed language that "the court shall consider evidence of domestic abuse as being contrary to the best interests of the child" doesn't make sense to me. In the first place, I can't believe that any judge would ever find abuse to be in a child's best interest. But it makes no sense to say that *evidence* of it is contrary to the child's best interest. What would be contrary to a child's best interest would be something along the lines of awarding sole custody and primary physical placement to a parent who has engaged in domestic abuse and with whom placement would endanger the child's physical, emotional, and mental health. The statutes already address that and the proposed language of the draft provides pretty specific instructions to a court on what to do if the court finds that a party has engaged in abuse.

Regarding the proposed language for s. 767.24 (4) (a) 1., I don't understand what the "unless there is evidence ...." language creates an exception to. If there is evidence of

interspousal battery or domestic abuse, is the court not supposed to set a physical placement schedule? If there is such evidence, is the court still supposed to set a physical placement schedule but not one that allows regularly occurring, meaningful periods of physical placement with each parent? Or is the court supposed to set a physical placement schedule but not one that maximizes the amount of time that the child spends with each parent? How does the proposed language relate to s. 767.24 (4) (b)?

I don't understand the significance of the language proposed for s. 767.24 (2) (am) and (4) (a) 1. related to the safety and well–being of the child and victim being of "primary importance." Does that mean that it is the most important factor for determining custody and physical placement? Does it mean that the court is supposed to place more importance on this factor than the factors in s. 767.24 (5)? Would it be preferable to include the safety and well–being of the child and alleged victim as a factor in s. 767.24 (5)?

I don't think that any of the language proposed for s. 767.24 (4) (a) 1. is needed, because I think it is covered by current law s. 767.24 (4) (b) and proposed s. 767.24 (6) (g) in the draft.

(2)(am) or

(2)(d) and

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3-13

Patti Seger + Tally
Tom Powell
Trace Berceau

must mediation to be scrapped

new
can presumption be made stronger so that it trumps the jt

* * if evidence of dom violence, jt cust presumpt does not apply

* jt custody + equal placement
maximizing phy placement for both parties is not = best if evid of dom vio
phy placement may endanger ex-spouse

direct judge to (6)(g) in (4)

* * if evidence of dom violence, guiding principle is safety
(same as best interest) (a best interest is guiding principle)

add re evidence of dom violence from adm code (NO)

? require to inform that they can waive mediation ??
parties

attorney admitted to practice in this state. In order to be appointed as a guardian ad litem under s. 767.045, an attorney shall have completed 3 hours of approved continuing legal education ~~relating~~ that relates to the functions and duties of a guardian ad litem under ch. 767 and that includes training on the dynamics of domestic violence and the effects of domestic violence on children and victims.

SECTION 2. 767.045 (4) of the statutes is amended to read:

767.045 **(4)** RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of a minor child as to paternity, legal custody, physical placement, and support. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child. The guardian ad litem shall consider the factors under s. 767.24 (5) and custody studies under s. 767.11 (14). The guardian ad litem shall investigate whether there is evidence that either parent has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and shall report to the court on the results of the investigation. If the guardian ad litem finds evidence of interspousal battery or domestic abuse, the guardian ad litem shall make recommendations to the court addressing the safety and well–being of the child and the victim of the interspousal battery or domestic abuse. The guardian ad litem shall review and comment to the court on any mediation agreement and stipulation made under s. 767.11 (12) and on any parenting plan filed under s. 767.24 (1m). Unless the child otherwise requests, the guardian ad litem shall communicate to the court the wishes of the child as to the child's legal custody or physical placement under s. 767.24 (5) (b). The guardian ad litem has none of the rights or duties of a general guardian.

****NOTE: The proposed language specified that the GAL must review and comment on an agreed upon parenting plan. Under the statutes, however, any party that seeks sole or joint legal custody or physical placement is supposed to file a parenting plan. There is no provision for filing a joint parenting plan or for agreeing to the other party's parenting plan.

SECTION 3. 767.11 (4) of the statutes is amended to read:

767.11 **(4)** MEDIATOR QUALIFICATIONS. Every mediator assigned under sub. (6) shall have not less than 25 hours of mediation training or not less than 3 years of professional experience in dispute resolution. Every mediator assigned under sub. (6) shall have training on the dynamics of domestic violence and the effects of domestic violence on victims and children.

SECTION 4. 767.11 (8) (c) of the statutes is amended to read:

767.11 **(8)** (c) The initial session under par. (a) shall be a screening and evaluation mediation session to determine whether mediation is appropriate and whether both parties wish to continue in mediation. Prior to ~~At~~ the initial session, for purposes of determining whether mediation should be terminated under sub. (10) (e) 1., 2., or 4., the mediator shall inquire whether either of the parties has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

****NOTE: I did not include proposed language about the mediator taking into account evidence of abuse in deciding whether to approve or reject an agreement because the statutes do not provide for the mediator to approve or reject the agreements.

SECTION 5. 767.11 (12) (a) of the statutes is amended to read:

767.11 **(12)** (a) Any agreement ~~which~~ that resolves issues of legal custody or periods of physical placement between the parties reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney, if any, for each party and by any appointed guardian ad litem, and submitted to the court to be included in the court order as a stipulation. Any reviewing attorney or guardian

ad litem shall certify on the mediation agreement that he or she reviewed it and the guardian ad litem, if any, shall comment on the agreement based on the best interest of the child. The mediator shall certify that the written mediation agreement is in the best interest of the child based on the information presented to the mediator and accurately reflects the agreement made between the parties. The court may approve or reject the agreement, based on the best interest of the child. Before approving or rejecting the agreement, the court shall ascertain from the mediator whether there is evidence that either party has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and, if so, the ways in which the agreement addresses the safety and well–being of the child and the victim of the interspousal battery or domestic abuse. The court shall state in writing its reasons for rejecting an agreement.

SECTION 6. 767.11 (14) (a) 2m. of the statutes is created to read:

767.11 **(14)** (a) 2m. Whether either party has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

SECTION 7. 767.11 (14) (d) of the statutes is created to read:

767.11 **(14)** (d) If the person or entity investigating the parties under par. (a) does not have professional experience or training related to the dynamics of domestic violence, the person or entity shall consult with a professional with expertise on domestic violence in every investigation under par. (a) in which there is evidence that a party engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

****NOTE: In answer to your question, you don't have to define or further elaborate on "expertise on domestic violence" unless you want to have more control over who is consulted.

b. It is in the best interest of the child for the party who committed the battery or abuse to be awarded joint or sole legal custody based on a consideration of the factors under sub. (5).

2. If the court finds under subd. 1. that both parties engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the party who engaged in the battery or abuse for purposes of the presumption under subd. 1. is the party that the court determines was the primary physical aggressor. In determining which party was the primary physical aggressor, the court shall consider all of the following:

a. All prior acts of domestic violence between the parties.

b. The relative severity of the injuries, if any, inflicted upon a party by the other party in any of the prior acts of domestic violence under subd. 2. a.

c. The likelihood of future injury to either of the parties resulting from acts of domestic violence, ~~between the parties~~.

d. Whether either of the parties acted in self–defense in any of the prior acts of domestic violence under subd. 2. a.

e. Whether there is or has been a pattern of coercive and abusive behavior between the parties.

f. Any other factor that the court considers relevant to the determination under this subdivision.

SECTION 13. 767.24 (5) (cd) of the statutes is created to read:

767.24 **(5)** (cd) Whether the child consistently exhibits emotional disturbance or disruptive behavior after spending time with a parent.

SECTION 14. 767.24 (5) (cm) of the statutes is amended to read:

767.24 **(5)** (cm) The amount and quality of time that each parent has spent with the child in the past~~, any necessary changes to the parents' custodial roles and any~~.

(cp) Any reasonable life–style changes that a parent proposes to make to be able to spend more time with the child in the future than the parent has spent with the child in the past.

SECTION 15. 767.24 (5) (ct) of the statutes is created to read:

767.24 **(5)** (ct) Whether a parent has attended parenting classes or sought counseling or other professional services to improve and enhance his or her relationship with the child.

SECTION 16. 767.24 (5) (dm) of the statutes is amended to read:

767.24 **(5)** (dm) The age of the child and the child's developmental and educational needs at different ages and whether each parent engages the child in activities that are appropriate for the child's age and stage of development and satisfactorily supervises the child.

SECTION 17. 767.24 (5) (e) of the statutes is repealed and recreated to read:

767.24 **(5)** (e) Whether a party or other person living in a proposed custodial household has a mental or physical impairment that negatively affects the child's intellectual, physical, or emotional well–being.

SECTION 18. 767.24 (6) (f) of the statutes is created to read:

767.24 **(6)** (f) If the court found, under sub. (2) (d), that a party had engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the court shall state in writing whether the presumption against joint or sole legal custody was rebutted and, if so, what evidence rebutted the presumption, and why its findings relating to legal custody and physical placement are in the best interest of the child.

5. Requiring the party who committed the battery or abuse to abstain from possessing or consuming alcohol or any controlled substance during, and for at least 8 hours preceding, his or her periods of physical placement if that party has an alcohol or substance abuse problem. History or evidence of

6. Prohibiting the party who committed the battery or abuse from having overnight physical placement with the child.

7. Requiring the party who committed the battery or abuse to post a bond for the return and safety of the child.

8. Notwithstanding s. 767.045 (5), requiring the continued appointment of a guardian ad litem for the child at the request of the non-abusing parent.

9. Imposing any other condition that the court determines is necessary for the safety and well–being of the child or the safety of the party who was the victim of the battery or abuse.

SECTION 20. Initial applicability.

(1) This act first applies to actions or proceedings that are commenced on the effective date of this subsection, including actions or proceedings to modify a judgment or order granted before the effective date of this subsection.

(END)

(c) A failure to cooperate is allowed when the W–2 agency determines that one of the good cause criteria apply.

(d) The good cause criteria in s. DWD 15.05.

(e) A good cause claim form is available from the W–2 agency upon request. The good cause claim form provides additional details on the process for claiming good cause as an exception to the cooperation requirement.

(f) The good cause claim form may be submitted to the W–2 agency at any time.

(3) At the child support agency's initial meeting with the custodial parent, the agency shall ask the parent if a good cause notice has been received. If the custodial parent has not received a good cause notice, the child support agency shall provide one. A custodial parent who expresses intent to file a good cause claim shall be referred to the W–2 agency. If the custodial parent informs the child support agency of an intent to file a good cause claim, the child support agency shall cease further action for a minimum of 15 days to allow the custodial parent to file a good cause claim with the W–2 agency.

Note: A copy of the good cause notice may be obtained by contacting the Department of Workforce Development, Division of Workforce Solutions, P.O. Box 7972, Madison, WI 53707–7972.

History: CR 02–039: cr. Register August 2002 No. 560, eff. 9–1–02.

DWD 15.05 Good cause criteria. A custodial or noncustodial parent is eligible for an exemption from the cooperation requirements in s. DWD 15.03 when the W–2 agency determines that any of the following criteria applies:

(1) Cooperation is reasonably anticipated to result in either physical or emotional harm to the child, including threats of domestic abuse or child kidnapping.

(2) Cooperation is reasonably anticipated to result in either physical or emotional harm to the parent, including domestic abuse.

(3) Cooperating with the child support agency would make it more difficult for the individual to escape domestic abuse or unfairly penalize the individual who is or has been victimized by such abuse, or the individual who is at risk of further domestic abuse.

(4) The child was conceived as a result of incest or sexual assault.

(5) The parent is considering whether to terminate parental rights and sought the assistance of a public or licensed private social services agency not more than 3 months ago.

(6) A petition for the adoption of the child has been filed with a court, except this does not apply as a good cause exemption from the responsibility to make payments under an existing court order.

History: CR 02–039: cr. Register August 2002 No. 560, eff. 9–1–02.

DWD 15.06 Good cause claim. (1) CLAIM FORM. The W–2 agency shall provide a written good cause claim form to any applicant or participant of Wisconsin works on request. The claim form shall describe the good cause criteria and appropriate documentation to corroborate a good cause claim.

(2) FILING A CLAIM. An applicant or participant may file a good cause claim with the W–2 agency at any time. The applicant or participant shall specify the circumstances that the applicant or participant believes provide sufficient good cause for not cooperating and shall indicate whether the applicant or participant requests that the child support agency proceed without his or her cooperation if good cause is granted, if that is possible. The applicant or participant shall swear or affirm under penalty of false swearing pursuant to s. 946.32, Stats., that the statements in the claim are true and shall sign the claim form in the presence of a notary public. Upon receipt of the good cause claim, the W–2 agency shall notify the child support agency within 2 days that no further action may be taken until it is determined whether good cause exists.

(3) SUBMITTING CORROBORATIVE EVIDENCE. The W–2 agency shall encourage the applicant or participant to submit as many types of corroborative evidence as possible. The W–2 agency worker shall advise the applicant or participant that if assistance is needed in obtaining evidence, the worker will assist him or her. The applicant or participant may submit corroborative evidence to the W–2 agency within 20 days from the date the claim was signed. A W–2 worker may, with supervisory approval, determine that more time is needed due to difficulty in obtaining corroborative evidence. If the good cause claim is based on domestic abuse and no corroborative evidence is currently available, the W–2 agency may permit the applicant or participant to submit evidence to the W–2 agency within 60 days from the date the claim was signed.

(4) TYPES OF CORROBORATIVE EVIDENCE. ~~A good cause claim~~ may be corroborated with any of the following types of evidence:

(a) Court, medical, criminal, child protective services, social services, psychological, school, or law enforcement records regarding domestic abuse or physical or emotional harm to the parent or child.

(b) Medical records or written statements from a mental health professional that pertain to the ~~emotional~~ health history, ~~present emotional health status, or prognosis of the parent or child.~~

(c) Birth certificates, medical records, or law enforcement records that indicate that the child may have been conceived as a result of incest or sexual assault.

(d) Court documents or other records that indicate that a petition for the adoption of the child has been filed with a court.

(e) A written statement from a public or private social services agency ~~that the parent is being assisted by the agency in deciding whether to terminate parental rights.~~

(f) Written and signed statements from others with knowledge of the circumstances on which ~~the good cause claim~~ is based, including, but not limited to, statements from neighbors, friends, family, or clergy.

(g) An identification by the screening process under s. DWD 12.15 as an individual or parent of a child who is or has been a victim of domestic abuse or is at risk of further domestic abuse and the alleged perpetrator is the other parent.

(h) Any other supporting or corroborative evidence.

Note: A copy of the good cause claim form may be obtained by contacting the Department of Workforce Development, Division of Workforce Solutions, P.O. Box 7972, Madison, WI 53707–7972.

History: CR 02–039: cr. Register August 2002 No. 560, eff. 9–1–02.

DWD 15.07 Approving or continuing benefits. If an individual is cooperating with the W–2 agency in furnishing evidence and information to be used in determining the good cause claim and other eligibility criteria are met, Wisconsin works benefits shall not be denied, delayed, reduced, or discontinued pending the determination of a good cause claim.

History: CR 02–039: cr. Register August 2002 No. 560, eff. 9–1–02.

DWD 15.08 Good cause determination. (1) EVALUATING A GOOD CAUSE CLAIM. (a) The W–2 agency shall require an applicant or participant who requests a good cause exemption to submit at least one document of corroborative evidence and the applicant's or participant's statement specifying the circumstances that the applicant or participant believes provide sufficient good cause for not cooperating. If an applicant or participant does not submit sufficient evidence to substantiate the good cause claim, the W–2 agency shall notify the individual that additional evidence is required and shall outline the types of evidence that may be used as provided in s. DWD 15.06 (4). The W–2 agency shall make a reasonable effort to obtain specific documents or information that the individual is having difficulty obtaining.

(b) The W–2 agency shall investigate any good cause claim based on anticipated harm, including when the claim is credible without corroborative evidence and when corroborative evidence